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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,373	08/20/2004	Rudiger Gebert	980-12	5173

30448 7590 12/27/2005

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EXAMINER

GIBSON, RANDY W

ART UNIT	PAPER NUMBER
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2841

DATE MAILED: 12/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/505,373

Applicant(s)

GEBERT, RUDIGER

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☒ Claim(s) 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 8 December 2005 have been fully considered but they are not persuasive. Applicant argues that his invention is concerned solely with weighing devices, not vehicle traction mats, so the reference to Preisler must be considered non-analogous art. The examiner disagrees that applicant's art may be so narrowly defined; both the reference to Gray and the reference to the Preisler are concerned with portable accessories for use with vehicles – specifically devices designed to fit under vehicle tires when in operation. It seems logical that a vehicle parts store that sold portable vehicle scales (which were designed to fit under the wheels), would also carry traction mats too (which are also designed to be placed under a vehicle's tires). Moreover, both traction mats and vehicle scale face similar problems in that any accessory that is placed under the tires of a vehicle will have a tendency to slide away while the vehicle was being driven upon it, so both references have the similar problem of how to increase traction between the bottom of the device and the ground (so that it does not slide away), and increasing traction between the top of the device and the vehicle wheel (so that the vehicle can be safely driven upon it without sliding off).

Applicant also argues that:

“The subject application teaches a weight sensor accessory pad that is placed under a weight sensor to enhance dispersion of fluids trapped between the pad and a surface on which the pad rests. In one embodiment, described on

page 11, the pad is used even when the weight sensor is embedded into a road. This is a clear indication that the pad is used to enhance fluid dispersion and not to prevent slippage of the weight sensor as it is not possible for an embedded weight sensor to slip.”

In response to applicant's argument quoted above, it is noted that the features upon which applicant appears to rely upon are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant argues that placing a rubber traction mat of Preisler under each of the scales of Gray would make the scale of Gray heavier, and thus less portable, which would render it unsuitable for its intended purpose. This does not seem to be a logical argument since each of the scales of Gray would weigh the same, and be just as portable, whether it sat directly upon the ground or whether it sat upon a rubber mat that had been previously placed upon the ground. Since the mats, and the scales that sit upon them, would be two separate pieces, there is no reason to assume that the scales would become less portable simply because a mat was placed upon the ground under each one of the scales.

Applicant argues that implicit in the examiner's argument, is that the traction mats of Preisler are more effective in preventing slippage than the grooved surface 14 of the scale of Gray by itself, yet the examiner does not state why this should be so. Thus, there is no suggestion or motivation to modify Gray as suggested by the examiner. The

examiner notes that the "reason why this should be so" is inherent in the intended use of the traction mat of Preisler, as stated in the reference itself. A vehicle's tire is grooved just like the bottom surface 14 of the scales of Gray, yet Preisler expressly teaches in his background section that the mats are necessary anyway because sometimes the traction produced by the grooved surface of the bottom of a vehicle's tires are not enough to prevent slippage under icy, muddy, or other extremely slippery conditions. If traction mats prevent slippage of grooved vehicle tires, then a traction mat must also prevent slippage of a grooved bottom of a vehicle scale under extreme slippery conditions.

Applicant argues that the combination of Gray and Preisler does not teach or suggest that the traction pad described therein is made of an elastic material so as to enhance dispersion, so that all claim limitations are not met. Since Preisler expressly teaches that his mat is "...flexible and elastic, being made of natural or artificial rubber, a synthetic elastomer, or a resilient plastic...", the examiner disagrees with the applicant that the references do not teach a mat made from an elastic material. With regards to the intended use statement that the purpose of the elastic mat is to "disperse liquids", the examiner notes that a recitation of the intended use of the invention in an apparatus claim must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963). Furthermore, mere recognition of latent properties in the prior art does not render nonobvious an otherwise

known invention. *In re Wiseman*, 596 F.2d 1019, 201 USPQ 658 (CCPA 1979). "The fact that appellant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious." *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985); and, *MPEP* § 2145.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (US # 3,191,701) in view of Preisler (US # 3,640,459). Gray shows vehicle weighing sensors with a rigid grooved bottom, for traction, to prevent the sensors from sliding across the ground as a vehicle is driven upon them (Col. 2, lines 15-21). Gray does not show a resilient pad with a grooved upper surface and a grooved lower surface to place between the weighing sensor and the ground. However, resilient traction pads for vehicles, that have a grooved upper surface and lower surface, have been known for some time as shown by the example of Preisler (Col. 1, lines 65-73). These pads are intended to be placed between a grooved vehicle tire and the ground to provide improved traction under extremely slippery conditions (Preisler, Col. 1, lines 3-6). It would have been obvious to place the resilient traction mats (20) of Preisler under the weighing devices of Gray in order to provide improved traction for the weighing

sensors under icy or muddy situations to prevent slippage of the weighing devices of Gray under extreme conditions.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gray (US # 3,191,701) in view of Preisler (US # 3,640,459) as applied to claims 1, 2, & 4-7 above, and further in view of Caldwell (US # 2,477,960). Preisler does not show a grid pattern on the upper surface of his mat. However, this type of pattern is used on anti-slip mats as shown by Caldwell (Fig.s 1 & 2). It would have been obvious to use a grid pattern on the surface of the mat of Preisler motivated by this pattern's art recognized suitability for its intended use. See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 196; *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988); and, *MPEP* § 2144.07.

Conclusion

5. The corrected drawings were received on 8 December 2005. These drawings are approved by the examiner.

6. Claims 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

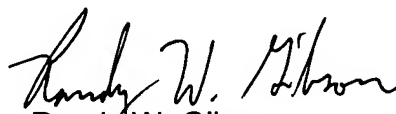
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2841

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Randy W. Gibson
Primary Examiner
Art Unit 2841